

APPENDIX A

General Docket: United States Court of Appeals for the Fourth Circuit,

Court of Appeals Docket #: 19-2458

Docketed: 12/20/2019

Nature of Suit: 3442 Jobs

Term: 03/12/2020

Marjory Childs v. Tidewater Community

Appeals the United States Eastern District Court (2:19-cv-00002-MSD-RJK

Federal Procedures 41(a)

Fee Status: in forma pauperis

APPENDIX B

Originated Court Information:

District: 0422-2: 2:19-cv-00002-MSD-RJK

Presiding Judge Mark S. Davis, Chief U.S District Court Judge-

Nature of Suit 442 Civil Rights -Employment

Cause Job Discrimination (Disability Act

Date filed: 01/02/2019

Date Order/Judgement: Date Order/Judgement EOD: Date NOA Filed: Date Rec'd COA:

11/18/2019

11/18/2019

12/18/19

12/19/19

Civil, Habeas, & 2255 Case: District Court granted & did not revoke IFP status (continues on appeal)

Appendix C

Charge of Discrimination In violation of Title VII of the Civil Act of 1964, as amended and the American with Disability Act of, 1990, as amended.

File Charge Date: 10/17/18- by Marjory Childs: File Date by Norberto Rose-Ramos, Local

Office Director filed EEOC Charge: Agency Charge # 437-2019-00054

FILED: March 12, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-2458
(2:19-cv-00002-MSD-RJK)

MARJORY CHILDS

Plaintiff - Appellant

v.

WESTERN TIDEWATER COMMUNITY SERVICES BOARD

Defendant - Appellee

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 19-2458

MARJORY CHILDS,

Plaintiff - Appellant,

v.

WESTERN TIDEWATER COMMUNITY SERVICES BOARD,

Defendant - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Mark S. Davis, Chief District Judge. (2:19-cv-00002-MSD-RJK)

Submitted: March 10, 2020

Decided: March 12, 2020

Before NIEMEYER and AGEE, Circuit Judges, and SHEDD, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Marjory Childs, Appellant Pro Se.

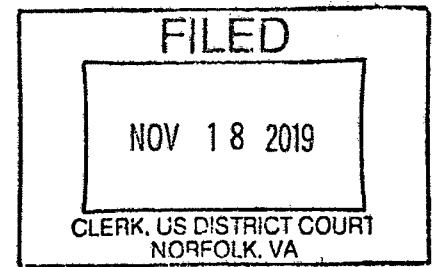
Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Marjory Childs appeals the district court's order dismissing her civil action without prejudice for failure to prosecute. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *Childs v. W. Tidewater Cmty. Servs. Bd.*, No. 2:19-cv-00002-MSD-RJK (E.D. Va. Nov. 18, 2019).¹⁶ We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.¹⁷

AFFIRMED

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division



MARJORY CHILDS,

Plaintiff,

v.

ACTION NO. 2:19cv2

WESTERN TIDEWATER
COMMUNITY SERVICES BOARD,

Defendant.

DISMISSAL ORDER

This matter is before the Court following *pro se* Plaintiff's continued failure to prosecute this action and to comply with Orders of this Court. As explained in more detail below, the Court hereby **DISMISSES** this action without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

I. Background

On March 7, 2019, the Court granted Plaintiff's second application to proceed *in forma pauperis*, and directed the Clerk to file Plaintiff's Complaint. Order Show Cause at 1-2, ECF No. 4. However, the Court explained that Plaintiff's Complaint "suffer[ed] from defects that must be addressed before this action may proceed." *Id.* at 2.

In her Complaint, Plaintiff alleged that she was previously employed by Defendant Western Tidewater Community Services Board ("Defendant"). See Charge of Discrimination ("Charge"), attached within Ex. 1 to Compl, ECF No. 5-1 at 2. Plaintiff claimed that she had "a chronic disability that prevented her [from doing] her job description" and from handling "severe caseloads." Compl. at 4, ECF No. 5. Plaintiff claimed that she took "medical leave," and that

while she was out of the office, “[her] supervisor did not distribute [her] case load to co-workers.” Charge at 1. Plaintiff claimed that when she returned to work, she “was given four extra severe cases.” *Id.* Plaintiff also claimed that her supervisor previously allowed her to work from home, but “now they do not allow [her] to.” *Id.* According to Plaintiff, she resigned on October 15, 2018, due to workload issues. *Id.*; *see also* Compl. at 4. In the “Basis for Jurisdiction” section of her Complaint, Plaintiff stated that this lawsuit was brought pursuant to “Title VII [of the Civil Rights Act of 1964], the American[s] [With] Disabilitie[s] Act, the Genetic [I]nformation Nondiscrimination Act, or the [A]ge Discrimination in Employment Act.” Compl. at 3.

In an Order to Show Cause dated March 7, 2019, the Court explained that pursuant to 28 U.S.C. § 1915(e)(2), it was required to dismiss a case at any time if the Court “determines that . . . the action . . . fails to state a claim on which relief may be granted.” Order Show Cause at 2 (quoting 28 U.S.C. § 1915(e)(2)). The Court further explained that “[a] *pro se* complaint should survive only when a plaintiff has set forth ‘enough facts to state a claim to relief that is plausible on its face.’” *Id.* (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Upon review of Plaintiff’s Complaint, the Court stated: “Plaintiff has not alleged sufficient facts to state a claim for relief under any of Plaintiff’s asserted theories.” *Id.* at 3.

Cognizant of *Goode v. Central Virginia Legal Aid Society, Inc.*, 807 F.3d 619 (4th Cir. 2015), and its progeny, and in deference to Plaintiff’s *pro se* status, the Court provided Plaintiff with an opportunity to file an Amended Complaint. *Id.* The Court stated:

Plaintiff is **ORDERED to SHOW CAUSE** why this action should not be dismissed by filing an Amended Complaint within thirty days of the date of entry of this Order to Show Cause. The Amended Complaint must (i) clearly identify all Defendants against whom Plaintiff intends to assert claims;¹ (ii) clearly identify the

¹ Upon review of Plaintiff’s Complaint, it was unclear to the Court whether Plaintiff intended to name certain individuals as Defendants in this action. *See* Order Show Cause at 3 n.2,

specific claims asserted against each Defendant; (iii) clearly identify all of the factual allegations upon which all of the claims are based; and (iv) attach any relevant exhibits to support such claims.

Id.

On April 4, 2019, Plaintiff filed a document in response to the Court's Order to Show Cause, which the Court construed as Plaintiff's Amended Complaint. *See* Am. Compl., ECF No. 6; Order at 3, ECF No. 7. Plaintiff's Amended Complaint consisted of (i) a copy of the Court's March 7, 2019 Order to Show Cause; (ii) a copy of Plaintiff's Charge; (iii) a copy of a Dismissal and Notice of Rights letter from the Equal Employment Opportunity Commission; (iv) a letter to the undersigned that contained certain factual allegations related to this action; and (v) over one hundred pages of additional exhibits. *Id.*

Contrary to the instructions set forth in the Court's March 7, 2019 Order to Show Cause, Plaintiff's Amended Complaint did not clearly identify (i) the Defendants against whom Plaintiff intended to assert claims; (ii) the specific claims asserted against each Defendant; or (iii) all of the factual allegations upon which Plaintiff's claims were based. Despite these deficiencies, the Court chose not to dismiss the action, but instead ordered Plaintiff to file a Second Amended Complaint. Order at 3. In an Order dated September 13, 2019, the Court stated:

Plaintiff is **ORDERED** to file a Second Amended Complaint within thirty days of the date of entry of this Order. Plaintiff is ADVISED that her Second Amended Complaint will supersede her Amended Complaint and will become the operative complaint in this action. As such, the Second Amended Complaint must (i) be clearly labeled as Plaintiff's Second Amended Complaint; (ii) clearly identify all Defendants against whom Plaintiff intends to assert claims; (iii) clearly state, with specificity, all claims that Plaintiff intends to assert against each Defendant; (iv) clearly set forth all factual allegations upon which Plaintiff's claims are based; and (v) attach any relevant exhibits to support such claims.

ECF No. 4. In its March 7, 2019 Order to Show Cause, the Court directed Plaintiff to "clarify her intentions via her Amended Complaint." *Id.*

Id. (emphasis in original). The Court specifically warned Plaintiff that “this case may be dismissed if she fails to comply with this Order.” *Id.* Plaintiff did not file a Second Amended Complaint, as ordered by the Court.

In an Order dated October 24, 2019, the Court determined that “Plaintiff’s failure to file her Second Amended Complaint, as ordered, constitute[d] a failure to prosecute this action and a failure to comply with the terms of the Court’s September 13, 2019 Order.” Order at 4, ECF No. 8. The Court explained:

Pursuant to Federal Rule 41(b), “[i]f the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it.” Fed. R. Civ. P. 41(b). Although Federal Rule 41(b) states that “a defendant may move to dismiss the action,” the Court retains the “authority to act on its own initiative,” and “need not await a motion from a defendant before it employs the dismissal sanction.” *Id.*; see also *Zaczek v. Fauquier Cty.*, 764 F. Supp. 1071, 1075 n.16 (E.D. Va. 1991) (citing *Link v. Wabash R. Co.*, 370 U.S. 626, 630 (1962)).

Id.

Although the Court determined that Plaintiff’s inaction justified dismissal under Federal Rule 41(b), the Court chose not to immediately dismiss this action. *Id.* Instead, in deference to Plaintiff’s *pro se* status, the Court *sua sponte* granted Plaintiff a limited extension of time to file her Second Amended Complaint. *Id.* The Court stated: “Plaintiff is **ORDERED** to file her Second Amended Complaint within fourteen days from the date of entry of this Order.” *Id.* Additionally, the Court specifically warned Plaintiff that “this action will be dismissed pursuant to Federal Rule 41(b) if she fails to comply with this Order.” *Id.* (emphasis added).

More than fourteen days have passed, and Plaintiff again failed to file a Second Amended Complaint, as ordered.² Under these circumstances, the Court finds that despite multiple

² The Court notes that the Clerk mailed the October 24, 2019 Order to Plaintiff at the address Plaintiff provided to the Court; however, the mailing was subsequently returned as

opportunities provided by the Court, Plaintiff has failed to prosecute this action. Additionally, the Court finds that Plaintiff has failed to comply with two separate Orders of this Court. Accordingly, Plaintiff's action is hereby **DISMISSED** without prejudice pursuant to Federal Rule 41(b).³

II. Conclusion

For the reasons set forth above, Plaintiff's action is hereby **DISMISSED** without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

Plaintiff may appeal this Dismissal Order by forwarding a written notice of appeal to the Clerk of the United States District Court, Norfolk Division, 600 Granby Street, Norfolk, Virginia 23510. The written notice must be received by the Clerk within thirty days from the date of entry of this Dismissal Order.

The Clerk is **DIRECTED** to send a copy of this Dismissal Order to Plaintiff.

IT IS SO ORDERED.

/s/ 

Mark S. Davis
CHIEF UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

November 18, 2019

undeliverable. See Undeliverable Mail, ECF No. 9. Plaintiff has not provided the Court with an alternate mailing address.

³ In *Doyle v. Murray*, 938 F.2d 33, 34 (4th Cir. 1991), the United States Court of Appeals for the Fourth Circuit discussed a four-factor test to be used in determining whether the sanction of dismissal *with prejudice* is appropriate under Rule 41(b). Here, the Court is dismissing Plaintiff's action *without prejudice*. As such, the four-factor test enunciated in *Doyle* is inapplicable.

CHARGE OF DISCRIMINATION		Charge Presented To:	Agency(ies) Charge No(s):
This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.		<input type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC	437-2019-00054
Virginia Division of Human Rights and EEOC State or local Agency, if any			
Name (indicate Mr., Ms., Mrs.) Ms. Marjory D Childs		Home Phone (757) 831-0426	Year of Birth 1965
Street Address City, State and ZIP Code 204D Oak Leaf Court, CHESAPEAKE, VA 23320			
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)			
Name WESTERN TIDEWATER COMMUNITY SSERVICE BOARD		No. Employees, Members 101 - 200	Phone No. (757) 942-1069
Street Address City, State and ZIP Code 135 S. Saratoga Street Suffolk, VA, SUFFOLK, VA 23434			
Name		No. Employees, Members	Phone No.
Street Address		City, State and ZIP Code	
DISCRIMINATION BASED ON (Check appropriate box(es).)		DATE(S) DISCRIMINATION TOOK PLACE	
<input checked="" type="checkbox"/> RACE <input type="checkbox"/> COLOR <input type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN <input type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input checked="" type="checkbox"/> DISABILITY <input type="checkbox"/> GENETIC INFORMATION <input type="checkbox"/> OTHER (Specify)		Earliest Latest 10-15-2018 10-15-2018 <input type="checkbox"/> CONTINUING ACTION	
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):			
I. I began employment with the above referenced employer from 2005 to 2009 and from 2012 to present. I provided my employer numerous letters concerning my chronic health issues. While I was on FMLA my supervisor did not distribute my case load to co-workers while I was on medical leave. The company human resource department expressed to me that I only can get two weeks sick pay, and not disability because it was only for employees that came after the year 2014. When I returned to work, I was given four extra severe cases, and then later, my supervisor allowed me to work from home but now they do not allow me to. My supervisor called me in her office last week saying she was giving me a supervisory and I told her that she never gave me a verbal. I have not ever had a write up since I worked with this company. She did not write me up because I explained to her the policy and rules I was following. Consequently, I resigned my position on October 15, 2018. II. I believe I was denied reasonable accommodation and constructively discharged because of my race, Black in violation of Title VII of the Civil Rights Act of 1964, as amended and the Americans with Disabilities Act of 1990, as amended.			

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.		NOTARY - When necessary for State and Local Agency Requirements
I declare under penalty of perjury that the above is true and correct.		I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.
Digitally signed by Marjory Childs on 10-16-2018 03:09 PM EDT		SIGNATURE OF COMPLAINANT
		SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: **Marjory D. Childs**
 204D Oak Leaf Court
 Chesapeake, VA 23320

From: **Norfolk Local Office**
 200 Granby Street
 Suite 739
 Norfolk, VA 23510



On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

437-2019-00054

Norberto Rosa-Ramos,
 Local Office Director

(757) 441-6669

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

- ☐ The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.
- ☐ Your allegations did not involve a disability as defined by the Americans With Disabilities Act.
- ☐ The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.
- ☐ Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge.
- ☒ The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.
- ☐ The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.
- ☐ Other (briefly state)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed **WITHIN 90 DAYS** of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission

Norberto Rosa-Ramos,
 Local Office Director

10/17/18
 (Date Mailed)

Enclosures(s)

cc: **Michelle Holland**
 Human Resources Director
 WESTERN TIDEWATER COMMUNITY SERVICE
 BOARD
 7025 Harbour View Blvd.
 Suite 119
 Suffolk, VA 23435

P.6

RECEIVED

2020 APR 15 AM 10:40

FILED: April 3, 2020

U.S. COURT OF APPEALS
FOURTH CIRCUIT

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-2458

(2:19-cv-00002-MSD-RJK)

MARJORY CHILDS

Plaintiff - Appellant

v.

WESTERN TIDEWATER COMMUNITY SERVICES BOARD

Defendant - Appellee

MANDATE

The judgment of this court, entered March 12, 2020, takes effect today.

This constitutes the formal mandate of this court issued pursuant to Rule
41(a) of the Federal Rules of Appellate Procedure.

/s/Patricia S. Connor, Clerk

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF VIRGINIA
Norfolk DIVISION

Plaintiff(s) Marjory Childs

CIVIL ACTION NO. 2:19-cv-02

v.

Defendant(s)

CRIMINAL NO. _____

2019 DEC 18 PM 2:15
CLERK OF DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK

RECEIVED

NOTICE OF APPEAL

Notice is hereby given that

Marjory Childs above named, hereby appeals to

the United States Court of Appeals for the Fourth Circuit from the Order entered in this action on

the 18 day of December 2019.

Marjory Childs
Attorney or Pro Se Appellant

301 Peachwood CT
Suffolk, VA 23434
Address

Dated: December 18, 2019

FILED: December 20, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-2458
(2:19-cv-00002-MSD-RJK)

MARJORY CHILDS

Plaintiff - Appellant

v.

WESTERN TIDEWATER COMMUNITY SERVICES BOARD

Defendant - Appellee

This case has been opened on appeal.

Originating Court	United States District Court for the Eastern District of Virginia at Norfolk
Originating Case Number	2:19-cv-00002-MSD-RJK
Date notice of appeal filed in originating court:	12/18/2019
Appellant(s)	Marjory Childs
Appellate Case Number	19-2458
Case Manager	Michael Radday 804-916-2702